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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

General Comment No. 8 (1997)

The relationship between economic sanctions and respect for economic, social and cultural rights

1. Economic sanctions are being imposed with increasing frequency, both internationally, regionally and unilaterally. The purpose of this general comment is to emphasize that, whatever the circumstances, such sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights. The Committee does not in any way call into question the necessity for the imposition of sanctions in appropriate cases in accordance with Chapter VII of the Charter of the United Nations or other applicable international law. But those provisions of the Charter that relate to human rights (Articles 1, 55 and 56) must still be considered to be fully applicable in such cases.

2. During the 1990s the Security Council has imposed sanctions of varying kind and duration in relation to South Africa, Iraq/Kuwait, parts of the former Yugoslavia, Somalia, the Libyan Arab Jamahiriya, Liberia, Haiti, Angola, Rwanda and the Sudan. The impact of sanctions upon the enjoyment of economic, social and cultural rights has been brought to the Committee's attention in a number of cases involving States parties to the Covenant, some of which have reported regularly, thereby giving the Committee the opportunity to examine the situation carefully.

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3. While the impact of sanctions varies from one case to another, the Committee is aware that they almost always have a dramatic impact on the rights recognized in the Covenant. Thus, for example, they often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work. In addition, their unintended consequences can include reinforcement of the power of oppressive élites, the emergence, almost invariably, of a black market and the generation of huge windfall profits for the privileged élites which manage it, enhancement of the control of the governing élites over the population at large, and restriction of opportunities to seek asylum or to manifest political opposition. While the phenomena mentioned in the preceding sentence are essentially political in nature, they also have a major additional impact on the enjoyment of economic, social and cultural rights.

4. In considering sanctions, it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing élite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country. For that reason, the sanctions regimes established by the Security Council now include humanitarian exemptions designed to permit the flow of essential goods and services destined for humanitarian purposes. It is commonly assumed that these exemptions ensure basic respect for economic, social and cultural rights within the targeted country.

5. However, a number of recent United Nations and other studies which have analysed the impact of sanctions have concluded that these exemptions do not have this effect. Moreover, the exemptions are very limited in scope. They do not address, for example, the question of access to primary education, nor do they provide for repairs to infrastructures which are essential to provide clean water, adequate health care, etc. The Secretary-General suggested in 1995 that there was a need to assess the potential impact of sanctions before they are imposed and to enhance arrangements for the provision of humanitarian assistance to vulnerable groups. 1/ In the following year, a major study, prepared for the General Assembly by Ms. Graça Machel on the impact of armed conflict on children, stated that "humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently.... Delays, confusion and the denial of requests to import essential humanitarian goods cause resource shortages.... [Their effects] inevitably fall most heavily on the poor". 2/ Most recently, an October 1997 United Nations report concluded that the review procedures established under the various sanctions committees established by the Security Council "remain cumbersome and aid agencies still encounter difficulties in obtaining approval for exempted supplies. ... [The] committees neglect larger problems of commercial and governmental violations in the form of black-marketing, illicit trade, and corruption." 3/

6. It is thus clear, on the basis of an impressive array of both country-specific and general studies, that insufficient attention is being paid to the impact of sanctions on vulnerable groups. Nevertheless, for various reasons, these studies have not examined specifically the nefarious consequences that ensue for the enjoyment of economic, social and cultural rights, per se. It is in fact apparent that in most, if not all, cases, those consequences have

either not been taken into account at all or not given the serious consideration they deserve. There is thus a need to inject a human rights dimension into deliberations on this issue.

7. The Committee considers that the provisions of the Covenant, virtually all of which are also reflected in a range of other human rights treaties as well as the Universal Declaration of Human Rights, cannot be considered to be inoperative, or in any way inapplicable, solely because a decision has been taken that considerations of international peace and security warrant the imposition of sanctions. Just as the international community insists that any targeted State must respect the civil and political rights of its citizens, so too must that State and the international community itself do everything possible to protect at least the core content of the economic, social and cultural rights of the affected peoples of that State (see also General Comment 3 (1990), paragraph 10).

8. While this obligation of every State is derived from the commitment in the Charter of the United Nations to promote respect for all human rights, it should also be recalled that every permanent member of the Security Council has signed the Covenant, although two (China and the United States) have yet to ratify it. Most of the non-permanent members at any given time are parties. Each of these States has undertaken, in conformity with article 2, paragraph 1, of the Covenant to "take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means ...." When the affected State is also a State party, it is doubly incumbent upon other States to respect and take account of the relevant obligations. To the extent that sanctions are imposed on States which are not parties to the Covenant, the same principles would in any event apply given the status of the economic, social and cultural rights of vulnerable groups as part of general international law, as evidenced, for example, by the near-universal ratification of the Convention on the Rights of the Child and the status of the Universal Declaration of Human Rights.

9. Although the Committee has no role to play in relation to decisions to impose or not to impose sanctions, it does, however, have a responsibility to monitor compliance by all States parties with the Covenant. When measures are taken which inhibit the ability of a State party to meet its obligations under the Covenant, the terms of sanctions and the manner in which they are implemented become appropriate matters for concern for the Committee.

10. The Committee believes that two sets of obligations flow from these considerations. The first set relates to the affected State. The imposition of sanctions does not in any way nullify or diminish the relevant obligations of that State party. As in other comparable situations, those obligations assume greater practical importance in times of particular hardship. The Committee is thus called upon to scrutinize very carefully the extent to which the State concerned has taken steps "to the maximum of its available resources" to provide the greatest possible protection for the economic, social and cultural rights of each individual living within its jurisdiction. While sanctions will inevitably diminish the capacity of the affected State to fund or support some of the necessary measures, the State remains under an

obligation to ensure the absence of discrimination in relation to the enjoyment of these rights, and to take all possible measures, including negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within the society.

11. The second set of obligations relates to the party or parties responsible for the imposition, maintenance or implementation of the sanctions, whether it be the international community, an international or regional organization, or a State or group of States. In this respect, the Committee considers that there are three conclusions which follow logically from the recognition of economic, social and cultural human rights.

12. First, these rights must be taken fully into account when designing an appropriate sanctions regime. Without endorsing any particular measures in this regard, the Committee notes proposals such as those calling for the creation of a United Nations mechanism for anticipating and tracking sanctions impacts, the elaboration of a more transparent set of agreed principles and procedures based on respect for human rights, the identification of a wider range of exempt goods and services, the authorization of agreed technical agencies to determine necessary exemptions, the creation of a better resourced set of sanctions committees, more precise targeting of the vulnerabilities of those whose behaviour the international community wishes to change, and the introduction of greater overall flexibility.

13. Second, effective monitoring, which is always required under the terms of the Covenant, should be undertaken throughout the period that sanctions are in force. When an external party takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population.

14. Third, the external entity has an obligation "to take steps, individually and through international assistance and cooperation, especially economic and technical" in order to respond to any disproportionate suffering experienced by vulnerable groups within the targeted country.

15. In anticipating the objection that sanctions must, almost by definition, result in the grave violations of economic, social and cultural rights if they are to achieve their objectives, the Committee notes the conclusion of a major United Nations study to the effect that "decisions to reduce the suffering of children or minimize other adverse consequences can be taken without jeopardizing the policy aim of sanctions". 4/ This applies equally to the situation of all vulnerable groups.

16. In adopting this general comment the sole aim of the Committee is to draw attention to the fact that the inhabitants of a given country do not forfeit their basic economic, social and cultural rights by virtue of any determination that their leaders have violated norms relating to international peace and security. The aim is not to give support or encouragement to such leaders, nor is it to undermine the legitimate interests of the international community in enforcing respect for the provisions of the Charter of the

United Nations and the general principles of international law. Rather, it is to insist that lawlessness of one kind should not be met by lawlessness of another kind which pays no heed to the fundamental rights that underlie and give legitimacy to any such collective action.

Adopted on 4 December 1997

Notes

1/ "Supplement to an Agenda for Peace: position paper of the Secretary-General on the occasion of the fiftieth anniversary of the United Nations" (A/50/60-S/1995/1) paragraphs 66-76.

2/ "Impact of armed conflict on children" (A/51/306, annex) (1996), paragraph 128.

3/ L. Minear, et al., Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System, Executive Summary. Study prepared at the request of the United Nations Department of Humanitarian Affairs on behalf of the Inter-Agency Standing Committee, 6 October 1997.

4/ Ibid.